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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,451

10/16/2003

Richard J. Ernst

14303

8743

7590

05/12/2005

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EXAMINER

SZUMNY, JONATHON A

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/687,451	Applicant(s) ERNST ET AL.	
	Examiner Jon A Szumny	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,7,8,10-18,20,21 and 23-29 is/are pending in the application.
 4a) Of the above claim(s) 5,7,11,16-18,20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,8,10,12-15 and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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This is the third office action for application number 10/687,451, Rod Hanger for Securing a Rod to a Substrate, filed on October 16, 2003.

Election/Restrictions

Claims 5, 7, 11, 16-18, 20 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 19, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8, 10, 12-15, 23-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 5,758,465 to Logue in view of U.S. Patent number 6,205,730 to Hasan et al.

Logue '465 discloses a rod hanger (figure 5) comprising a generally planar mounting portion (24) having a hole (52) along with a top surface (40) and a bottom surface (44) with the hole extending therebetween, a generally planar rod receiving portion (34) with a top surface (42) a bottom surface (46) and a hole (60) that includes a lip formation (64) disposed thereabout, and a connecting element (36), wherein the planes of the mounting and rod receiving portions are generally parallel, wherein the rod

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hanger defines a unitary body with generally uniform thickness, wherein the hole of the mounting portion is coincident along the plane, has a radius and defines a circumference of 360 degrees, wherein the mounting portion has four corners.

However, Logue '465 fails to specifically teach a plurality of anti-rotation elements on the top surface of the mounting portion plane uniformly spaced from the hole. However, Hasan et al. '730 teaches a mounting portion/bracket (figures 1,3) that mounts against a surface and including a central hole (26) along with a plurality of generally hemispherical anti-rotation elements (42, see column 4, lines 60-62) on the top surface of the mounting portion plane (the "top" surface is considered the surface facing against the mounting surface and further, "top" surface can be relative to any specific reference point) uniformly spaced along the plane in a radial direction from the hole and have an angular orientation of about 90 degrees to the plane. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a plurality of anti-rotation elements on the hanger of Logue '465 as in Hasan et al. '730 so as to provide for a more stable hanger by preventing rotation or twisting of the mounting portion during mounting of the fastener through the hole and into a mounting surface. Further, regarding claim 15, although the anti-rotation elements of Hasan et al. '730 might not be interpreted as having the shape of a generally truncated cone, it would have been obvious to make the anti-rotation elements of any of a number of shapes, so long as they continue to provide the anti-rotation function without puncturing the mounting surface.

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Claims 26, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 5,758,465 to Logue in view of U.S. Patent number 6,205,730 to Hasan et al, and further in view of U.S. Patent number 4,543,763 to Ernst et al.

Logue '465 in view of Hasan et al. '730 disclose the previous invention failing to specifically teach four anti-rotation elements disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and disposed proximate to each of the corners of the mounting portion. Nevertheless, Ernst et al. '763 teaches a mounting portion (figures 4,6) with a central hole and four such anti-rotation elements (22) at the corners of the mounting portion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the hanger of Logue '465 in view of Hasan et al. '730 so that the anti-rotation elements number four anti-rotation elements disposed about the hole and spaced apart from each other by about 90 degrees along the circumference of the hole and disposed proximate to each of the corners of the mounting portion as in Ernst et al. '763 so as to provide for superior rotation prevention means.

Response to Arguments

Applicant's arguments filed February 28, 2005 have been fully considered but they are not persuasive.

Applicant's arguments with respect to claims 1-3, 8, 10, 12-15 and 23-29 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sauer et al. '865, Boley '134, Lemke '714 and Osterle et al. '855 teach various mounting portions with anti-rotation elements.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

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The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a large, stylized flourish extending from the end of the signature.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
May 10, 2005